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THE ROLE OF INTERPRETATION IN SOCIAL CHANGE: DECRIMINALISATION OF SECTION 377 IPC

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I. INTRODUCTION

The quest for equal rights for the LGBTQ+ community has been challenging and prolonged, accompanied by numerous court fights and social campaigns all trying to achieve the same objective of removing structural oppression that has been imposed on the queer community. The main crux of the battle lies in the crucial questions of: how exactly does one comprehend Section 377¹ and the Indian Constitution, along with the pre-historical societal trenches in terms of the rights to life, equality, dignity, and expression of the LGBTQ+ community?

The judiciary being an integral organ of the functioning of the country, interpretation plays a way bigger role in social change than anticipated; it is a vital component in shaping society and our position within it². Without proper interpretative techniques, the statutes might as well be random words bunched together because it is the interpretation through which we can gain the true meaning of law. The decriminalisation of Section 377, which marks an innaugral in itself for the LGBTQ+ rights in India through the case *Navtej Singh Johar vs. UOI*³, through reversing the models of the process of interpretation and after many failed attempts in various cases, including *Suresh Kumar Koushal vs. Naz Foundation*⁴, is a powerful illustration of the transformative power of interpretation.

¹ Article 377- Indian Kanoon. (n.d.). Retrieved April 5, 2023, from <https://indiankanoon.org/doc/1836974/>

² Journal of the Indian Law Institute - JSTOR. (n.d.). Retrieved April 5, 2023, from <https://www.jstor.org/stable/43950868>

³ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

⁴ Suresh Kumar Koushal and Anr. v. Naz Foundation and Ors., (2014) 1 SCC 1

The role of interpretation of statutes extends far beyond the courtroom; it is an efficient mechanism that can be used in challenging prevailing narratives and mobilising societies to collectively reimagine the world as we perceive it. The primary aim of this study is to point out the errors made by the judges in interpreting Section 377, with a suggestive emphasis on what alternative techniques could be employed to reach the proper interpretation faster. The paper also contends that by engaging in an intellectual debate about the law, constitution, society, and various contexts that flow from it, we will gain a better understanding of the interpretation of draconian laws such as Section 377 in the dynamic setting of the world today.

II) SURESH KUMAR KOUSHAL V. NAZ FOUNDATION

A) FACTUAL BACKDROP

It is often said that "*with great power comes great responsibility*," and similarly, the judiciary, being an integral organ of the government, bears enormous responsibility in not only imparting justice but also shaping society. Even a minute error by the judges in the interpretation of a statute, which might vary from choosing an improper approach to a statute to failing to correctly administer a doctrine, can result in disastrous consequences and send us back decades. A prime example for this is the case that is heavily criticised and precisely depicts how much of an impact an error in judgement can have on the society at large: *Suresh Kumar Koushal & Anr. v. Naz Foundation and Others*. This dispute was centred around the ideas of envisaging basic fundamental rights for the persons belonging to the LGBTQ+ community, how their mere existence became a source of prosecution and punishment under the law, and all of this solely on the basis of an antiquated provision, namely, Section 377, of the Indian Penal Code 1860, and the values ingrained into the Indian legal system not through our Indian culture and principles but rather through the canals of the Common Law.⁵

Suresh Kumar Koushal vs. Naz Foundation is considered a landmark judgement in Indian legislation for more than one reason. It addressed the legitimacy of Section 377 of the IPC, which was a provision set up in the colonial era, penalising "unnatural" sexual acts, which at that time included consensual homosexual activities among adults, which naturally had the effect of

⁵ Reference- The quality of mercy, strained: Compassion, empathy and other ... (n.d.). Retrieved April 5, 2023, from <http://docs.manupatra.in/newsline/articles/Upload/8E21EC86-94D8-436A-8EBE-3BE1A56D261C.pdf>

prosecution and discrimination against the members belonging to the LGBTQ+ community. In an attempt to put an end to this grave injustice, in 2009, a NGO by the name of Naz Foundation, which till date works on issues related to sexual health and creating awareness on HIV/AIDS, filed a writ petition challenging the constitutionality of Section 377. The High Court held that Section 377 was unconstitutional to the extent that it criminalised consensual sexual acts between adults of the same sex.⁶ However, in 2013, the Supreme Court of India overturned the High Court's decision in *Suresh Kumar Koushal & Anr. v. Naz Foundation and Others*, stating that Section 377 does not violate the Indian Constitution and was a necessary measure to protect public morality⁷. This paper is an attempt to demystify the judgement, spell it out and analyse the errors committed by each of the courts in interpreting the statutes that eventually lead to a faulty judgement.

B) ANALYSIS OF THE HIGH COURT JUDGEMENT AND ERRORS IN INTERPRETATION:

The reasoning of Chief Justice Shah and Justice Muralidhar unilaterally and undeniably ruled in favour of the contentions raised by the Naz Foundation. The Hon'ble High Court of Delhi was of the opinion that the progression and development in the social context of the country should not be negated by validating archaic provisions because, by doing so, we move one step further downward into the erroneous notions of morality. A hint of Gadamer's hermeneutic circle can be seen here. In layman's terms, the hermeneutic circle is a technique widely used in analysing legal statutes as well as literary works. It aims to eliminate any obstacles, such as adhering to the bare text or only to the recent assumption of the general public towards a particular statute or legislative policy.⁸ Interpretation, according to Gadamer, should be limitless and not bound to the four corners of the text. There are different perspectives on a statue, taking into account surrounding factors such as a dynamic interrelation between legal language, a societal setting, and the rights envisaged for an individual, and only a harmonious reading of all these perspectives gives us the most appropriate interpretation of the statue's applicability in the current day. This method of interpretation is especially important when it comes to a case like this, where issues relating to

⁶ Angels, Bhardwaj, A., Pattnaik, P., & Shamsuddin. (2019, March 16). Suresh Kumar Kaushal vs. Naz Foundation: A critical analysis. Retrieved April 5, 2023, from <https://www.lawctopus.com/academike/suresh-kumar-koushal-vs-naz-foundation-critical-analysis/>

⁷ Suresh Kumar Koushal V/s Naz Foundation (2014) 1 SCC 1. (n.d.). Retrieved April 6, 2023, from <https://www.legalserviceindia.com/legal/article-9088-suresh-kumar-koushal-v-s-naz-foundation-2014-1-scc-1.html>

⁸ Gadamer/statutory interpretation: 7 : Gadamer and Law: William N. Es. (n.d.). Retrieved April 5, 2023, from <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315093765-7/gadamer-statutory-interpretation-william-eskridge>

minority individual rights affected by societal norms in a dynamic society are decided.⁹ Also, there is an element of the golden rule of interpretation that can be seen here, where the ordinary meaning of the words leads to the absurd effect of criminalising adults engaging in consensual intercourse. So, the courts here took into account the context in which the provision was written, the overall intention and applicability, the language and phraseology present, and the effect of application of the provision.

Further, the Hon'ble High Court, did not just limit itself to engage a variety of legal material, including domestic and international judgements; it also gave a lot of importance to a comparative interpretation of the law by relying on landmark judgements of different jurisdictions, which included the European Court of Human Rights, the United Kingdom, the Republic of Ireland, South Africa, and the USA. Moreover, in assessing the extent of the detrimental discriminatory effects that the archaic provision was the source of, the court employed numerous human rights studies and an advancing global legal framework, along with principles like the Yogyakarta Principles and the Equal Rights Trust's Declaration of Principles of Equality.¹⁰ The High Court, after a thorough understanding of the text in relation to all the context surrounding it, held that Section 377 passes the golden triangle test, as depicted by the invalid classification of adults engaging in consensual sexual relations in private as criminals, and thereby grossly violating the fundamental rights of equality, expression, personal liberty, and freedom.¹¹ This reasoning again highlights Gadmer's approach and the Golden Rule, where it is contended that there has to be a fusion of horizons between the interpreter and the text; they should not restrict themselves to the text of the law but go beyond and look at the broader context, like the historical and cultural context, and interpret the archaic with the proper context and humility to arrive at an interpretation that properly bridges the gap between the past and the present.¹²

However, applying perfect reasoning while interpreting does not always result in the perfect outcome. There are specific principles important to interpreting and constructing a statute that

⁹ Malpas, J. (2022, August 22). Hans-Georg Gadamer. Retrieved April 5, 2023, from <https://plato.stanford.edu/entries/gadamer/>

¹⁰ Able to identify as Comparative Constitutional analysis through Choudhry, S. (2010, June 14). Globalization in search of justification: Toward a theory of comparative constitutional interpretation. Retrieved April 6, 2023, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1624070

¹¹ The analysis of the judgement was done through the official documents of the case and Learning from Suresh Kumar Koushal v. Naz Foundation through Introspection, Inclusion, and Intersectionality: Suggestions from within Indian Queer Justice Movements. (n.d.). Retrieved April 6, 2023, from <https://heinonline.org/HOL/Welcome>

¹² Galanter, M., & Ram, V. (n.d.). Suo motu intervention and the Indian Judiciary (Chapter 4) - A qualified hope. Retrieved April 6, 2023, from <https://www.cambridge.org/core/books/qualified-hope/suo-motu-intervention-and-the-indian-judiciary/F1B7C8F9D4293703D56B061560C630D0>

should be appropriately chosen among many by the judges for the correct interpretation. Here, the High Court made an error, where the judges intended to apply the doctrine of severability to the provision but instead had the effect of reading down the statute. The doctrine of severability, if properly applied, has the effect of affirming the independent functionality of a specific portion of the statute, which is held to be within the constitutional boundaries, while invalidating the remainder of the unconstitutional part of the statute. By making this separation, it serves the purpose of maintaining the lawful purpose of the statute and respecting the intention of the legislature.¹³ However, the High Court in this case interpreted it by reading down into various aspects of the provision. This reading down gave the provision some sense of operational validity. This minute mistake resulted in the High Court overstepping its boundaries and acting ultra vires to the powers allocated to it within the doctrine of separation of powers, which is considered one of the basic structures of the Indian Constitution. While giving the judgement, it assumed the role of the legislature. This can be deduced from the fact that there was a certain level of uncertainty in determining whether there was a need to sever or read it down, and in an attempt to do both harmoniously, an entirely new meaning was given to the provision, which was substantially different from the intention of the legislature. The proper interpretation of law employing various contexts and humility should not always lead to overturning a provision in an attempt at the proper interpretation of a provision and judicial radicalism, which is also a criticism of Gadamer's Hermeneutic Circle. The interpretation of a provision in the light of social development may result in invalidating laws when modification and severability are still options.^{14 15}

C) ANALYSIS OF THE SUPREME COURT JUDGEMENT AND ERRORS IN INTERPRETATION:

The judgement given by the Supreme Court, overturning the High Court's decision and upholding the constitutionality of a discriminatory provision, is a prime example of judicial conservatism through a failure to take into account the context around the said provision and a blatant ignorance towards the evolving trend of human rights and the need for inclusivity and non-discrimination in

¹³ The interpretation of statutes, by Vepa P. Sarathi. (n.d.). Retrieved April 6, 2023, from <http://link.law.upenn.edu/portal/The-interpretation-of-statutes-by-Vepa-P./IULmDte27XU/>

¹⁴ Saxena, N. (2013, December 15). Demystifying the naz verdict: Where did the courts go wrong? Retrieved April 5, 2023, from <https://lawlex.org/lex-pedia/demystifying-the-naz-verdict-where-did-the-courts-go-wrong/8833>

¹⁵ Analysis of the judgement was made through the official case documents and Koushal v. Naz Foundation. (2021, July 06). Retrieved April 6, 2023, from <https://globalfreedomofexpression.columbia.edu/cases/koushal-v-naz-foundation/>

modern democracies. This judgement has been widely criticised for the errors in the appropriate mode of statutory implementation for an archaic provision like the one in question. The Supreme Court stuck to textualism and limited itself to the literal rule of interpretation while analysing the provision. Textualism, or the literal rule of interpretation, was famously used and popularised by the works of Justice Scalia. It is a statutory interpretation technique that requires the judges to stick to the ordinary meaning of the provision to ensure that the legislative intentions are met. This method is successfully employed when the provision to be interpreted is clear and unambiguous and the phraseology has one clear meaning. This, according to the textualist, promotes certainty, consistency, and predictability in the legal system. However, this can lead to detrimental effects when applied to a law that is ambiguous or unclear, and the application of the literal rule would result in absurd and unjust results. As the situation is, the judges may feel the need to deviate from the literal rule and employ other principles to take a fair and just stance.

Here, there were two possible routes that the Supreme Court could have taken in this instance: one, follow the text of the provision and uphold the validity of the archaic law; or, attempt to garner the spirit of the law, given the social context, and uphold the reasoning and decision of the High Court and sever the provision. The prior meant the use of the literal rule and narrow interpretation, which would lead to inequality, discrimination, and promote public malice towards the homosexual commodity. On the other hand, the latter meant a step towards a more equal, inclusive, and safe environment for everyone and protecting their fundamental and human rights of equality, expression, privacy, and personal liberty. The courts here made an error in judgement and stuck to the bare text of the provision. This error resulted in a faulty judgement that lacked proper legal reasoning and a failure to take into account the principles of equality, non-discrimination, and dignity, which form the cornerstone of the Indian Constitution and are essential for the development of society. The courts disregarded medical and scientific data presented by the respondents, demonstrating the evidence that homosexuality is merely a normal variation of human sexuality and not a mental illness as propagated by ill-informed and ignorant people in society.¹⁶

Further, the courts failed to take into account the consequences of unnecessarily criminalising homosexual intercourse, such as increased social stigma, prejudice, intimidation, and brutality towards a minority section of society. The courts also failed to protect minority rights, citing a

¹⁶ Maxwell, P., & Langan, P. (1969, January 01). Maxwell on the interpretation of statutes. /: Sir Peter Benson Maxwell. Retrieved April 6, 2023, from <https://lawcat.berkeley.edu/record/57688>

lack of reported cases of harassment and inequality. But aren't the courts respecting and valuing every individual and passing judgements that are not favouring numbers but justice? There is seen as a tussle between assessing together the concepts of morals and law and stating that the moral rejection of a specific act is an adequate justification for criminalising a provision. Moral consideration in cases like these will almost always result in faulty judgements because the whole idea of morality is arbitrary in nature, and here the morals of the majority have been the basis, ignoring the moral stand ground of the minority¹⁷. The judgement also disregarded the rights protecting the sexual preferences of a person under the fundamental rights of equality, dignity, and privacy by considering the criminalization of consensual intercourse between adults. So, in conclusion, applying the literal interpretation to a pre-colonial provision would undoubtedly result in absurd outcomes, so in a situation like this, the courts should sway away from the bare text and employ principles like the hermeneutic circle and the golden rule, which do not limit the understanding and the judge's own experiences, prejudices, and social context, but use them to form an interpretation that is correct.¹⁸¹⁹

III) NAVTEJ SINGH JOHAR VS. UOI

A) FACTUAL BACKGROUND

Now, to one of the landmark judgements, which came in as a panacea against the long-fought battle for equality and dignity, which was won at least to some extent. This extremely tedious journey of ascertaining a correct interpretation by applying appropriate techniques of interpretation of the pre-colonial penal statute, which was a source of extreme cruelty, discrimination, public stigma, lack of expression, among many others, that had a violative effect on the fundamental rights of a person, came to an end with the Supreme Court's decision in *Navtej Singh Johar vs. UOI* with the declaration of Section 377 invalid to the extent of criminalising sexual activities between consensual adults of same-sex. And while it is definitely a milestone for

¹⁷ Importance of Statutory Interpretation was skulled out through a joint reading of various articles in the course manual including Statutory interpretation as practical reasoning - Yale university. (n.d.). Retrieved April 6, 2023, from https://digitalcommons.law.yale.edu/fss_papers/3829/

¹⁸ Reference- Saxena, N. (2013, December 15). Demystifying the naz verdict: Where did the courts go wrong? Retrieved April 5, 2023, from <https://lawlex.org/lex-pedia/demystifying-the-naz-verdict-where-did-the-courts-go-wrong/8833>

¹⁹ Analysis of the judgement was made through the official case documents and Koushal v. Naz Foundation. (2021, July 06). Retrieved April 6, 2023, from <https://globalfreedomofexpression.columbia.edu/cases/koushal-v-naz-foundation/>

the initiation of LGBTQ+ rights in India, it is also a case that is one of a kind that sets a benchmark for the interpretation of an archaic penal statute in today's modern world.

The case of *Navtej Singh Johar vs. UOI* is a landmark moment in Indian legal history, not only because it marked a significant milestone in the fight for LGBTQ+ rights in the country but also because it involved a critical aspect of the interpretation of statutes. The essence of the case lay in the alignment of the long-contested interpretation of Section 377 with the provisions of the Constitution in the context of dynamic social realities. The perfect balance between the rights of the individual and the public's sentiments The judges had to deal with complex legal problems, which required extensive research, in ascertaining the meaning and medical accuracy of "sexual preference" and interlinking it to the broader concepts of equality, privacy, and minimising government's interference in personal ways of living life, as well as the contention that Section 377 is a product of a bygone era that has to be left in the past where it comes from with orthodox opinions of decency and public morality. It was only natural that the interpretation of such a complex case would require a great deal of legal reasoning along with the application of various rules of statutory interpretation to reach a conclusion.²⁰

B) ANALYSIS OF THE INTERPRETATION OF THE STATUTE IN THE JUDGEMENT

The Supreme Court, which included a five-judge panel headed by Chief Justice Deepak Mishra, with sitting Justice A.M. Khanwilkar, Justice Rohinton Fali Nariman, Justice D.Y. Chandrachud, and Justice Indu Malhotra, collectively resorted to a trial-and-error method to ascertain which rule or combination of rules of interpretation gives the most desirable solution. Desirability, however, is a subjective concept, but to have uniformity and unarbitrariness to the judgement, the desirability here was measured through a range of "constitutional morality" principles like the utilitarian theory, the harm principle, and Lord Devlin and Hart's debates on law and morality. Application of which stated that consensual intercourse between same-sex adults does not cause any harm to anyone else. Moreover, a provision like this has the effect of repressing the LGBTQ+ community by painting them as criminals.²¹ Here, there can be seen a rejection of the orthodox interpretation, i.e., the literal interpretation of the provision, which in essence gave an absurd result

²⁰ Content by author. (n.d.). Retrieved April 6, 2023, from <https://ohrh.law.ox.ac.uk/author/rishika-sahgal/>

²¹ *Navtej Singh Johar v. Union of India* - International Journal of Law ... (n.d.). Retrieved April 6, 2023, from <https://www.ijlmh.com/paper/navtej-singh-johar-v-union-of-india/>

to an interpretation method, and a shift to a combination of interpreting techniques that, when used in harmony, perfectly eliminate all the barriers standing in the way of a desirable statutory interpretation.

The courts used the golden rule of interpretation to reach a conclusion that was both just and fair and took into account all the essential elements for the interpretation of an archaic provision. The golden rule of interpretation, which was first popularised in the 16th century, is an important tool of interpretation. According to the Golden Rule, a judge while interpreting a statute should refrain from employing a literal reading of a provision that could lead to bizarre or irrational outcomes. Rather, a provision should be interpreted in a manner that is in alignment with the legislature's intention and the overall contextual viewpoint of the judges²². This can be seen as an amalgamation of the purposive rule, the contextual rule, and the comparative rule. The evidence for this can be found in the reasoning of the court, right from the quotes cited by Chief Justice Deepak Mishra, the words of Shakespeare, Goethe, Oscar Wilde, Leonard Cohen, and many more, to break free the LGBTQ community from the handcuffs of social and legal norms to international legal documents assessing the provision.

While analysing the provision through a purposive approach, the court's main aim is to maintain the sanctity of the legislature's intention. This means the judges went a step beyond the literal reading of the bare text and focused on examination of aspects like surrounding context, progression throughout the area, and international policies set up in place.²³ Here, the initial purpose of Section 377 was to criminalise sexual acts that were against the order of nature, such as rape, sodomy, bestiality, and many more. With time, however, the clause was interpreted in such a way that it resulted in criminalising consensual intercourse between same-sex adults. The court was of the opinion that the purposeful rule rendered this application of the provision illegal because it went against the fundamental intent of the drafters. In classifying homosexual intercourse as not an act that is 'against the order of nature' or "carnal intercourse," the court relied on various medical reports that were ignored in the previous judgement, which explicitly stated that a particular sexual preference is not a mental illness.

²² G P Singh interpretation of statutes. (n.d.). Retrieved April 6, 2023, from <https://www.scribd.com/document/535409727/G-P-Singh-Interpretation-of-Statutes>

²³ G P Singh interpretation of statutes. (n.d.). Retrieved April 6, 2023, from <https://www.scribd.com/document/535409727/G-P-Singh-Interpretation-of-Statutes>

An essential tenet in the realm of statutory interpretation is the contextual rule of interpretation, which puts emphasis on the context (social or otherwise), intention, and overall background of the provision when interpreting its application. This rule is especially crucial when dealing with ancient provisions that were penned down in a very different setting as compared to today's modern, democratic Indian society. It also aids in preventing an interpretation that is in conflict with the basic liberties envisaged for a person, like the ideals of equality and freedom of expression. It has the effect of eliminating the elements of systematic oppression or prejudice that were prevalent in Victorian times²⁴. Similarly, the courts, while determining the validity of Section 377, which was passed in 1861, observed that the provision is reflective of the social and political setting and the Victorian values prevalent at that time. This does not, however, resonate with the social setting today: a provision where no difference is made between public and private acts or consensual or non-consensual acts without any consideration to the age, consent, nature of the act, or extent of the harm caused.

Moreover, the error committed by the High Court in *Suresh Kumar Koushal vs. Naz Foundation* was rectified through the proper application of the doctrine of severability. As previously stated in the paper, the doctrine of severability is critical when dealing with the constitutionality of a specific provision in the context of presumptions of constitutionality and constitutional morality. There needs to be substantial evidence when ruling the invalidation of a provision on the basis of a violation of fundamental rights in Articles 14, 19, and 21. Here, the Supreme Courts took into account the elements of error in classification and analysed the provision relying on the *NALSA* judgement and the *Puttaswamy* judgement in determining whether sexual orientation is an integral part of a human. Not limiting to that, the court engaged in a dialogue under the Principle of Yogyakarta on the sexual orientation and gender identification of an individual and the 1957 U.K. Wolfenden Committee Report, invalidating the section²⁵ and stating that:

²⁴ G P Singh interpretation of statutes. (n.d.). Retrieved April 6, 2023, from <https://www.scribd.com/document/535409727/G-P-Singh-Interpretation-of-Statutes>

²⁵ Choudhry, S. (2010, June 14). Globalization in search of justification: Toward a theory of comparative constitutional interpretation. Retrieved April 6, 2023, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1624070

"Intimacy between consenting adults of the same sex is beyond the legitimate interests of the state," and sodomy laws violate the right to equality under Article 14 and Article 15 of the Constitution by targeting a segment of the population for their sexual orientation."²⁶

Often there is a presupposition of strict construction in the interpretation of penal statutes; however, the main aim of this is to avoid unnecessary criminalization. This strategy is not applicable when the constitutionality of the penal provision itself is challenged, which calls for a more holistic and liberal approach to interpretation. Therefore, in conclusion, the Supreme Court utilised very efficiently crucial principles and interpretation techniques to deliver a judgement that was not only just and fair but also took a step towards a positive social change and celebrated and, more importantly, respected each person's individuality. The Supreme Court's series of cases highlights the extent of the influence of proper judicial reasoning and the need for a variety of rules of interpretation in a country where almost all of the provisions were drafted in the Victorian era for a different archaic India, which does not resonate with the notions of morality and justice found now. Proper judicial reasoning and interpretation are not only beneficial for making the law dynamic but also a building block for social change.²⁷

IV) THE WAY FORWARD (CONCLUSION)

So, concluding with the words of Wendell Phillips,

"Statutes are mere milestones, telling how far yesterday's thought had travelled, and the talk of the sidewalk today is the law of the land. With us, law is nothing unless close behind it stands a warm, living public opinion."²⁸

The journey from the Naz Foundation to Navtej Singh Johar took five long years to rectify the error in interpretation and is one of the proudest moments of the Indian judiciary. It marked a victory for emancipation and liberation. However, this judgement can in no way be seen as a cure-

²⁶ The entire judgement analysis is done through looking at the official case documents and from Navtej Singh Johar v. Union of India. (2018, November 27). Retrieved April 6, 2023, from <https://globalfreedomofexpression.columbia.edu/cases/navtej-singh-johar-v-union-india/> and Ambade, A. (2020, July 23). Case summary: Navtej Singh Johar v. Union of India Thr. secretary ministry of law and justice. Retrieved April 5, 2023, from <https://lawlex.org/lex-bulletin/case-summary-navtej-singh-johar-v-union-of-india-thr-secretary-ministry-of-law-and-justice/25100>

²⁷ Lexis nexis's principles of statutory interpretation by G P Singh - 15th edition 2021. (2022, February 03). Retrieved April 6, 2023, from <https://www.bharatilawhouse.com/product/lexis-nexiss-principles-of-statutory-interpretation-by-g-p-singh-15th-edition-2021-9789391211028/>

²⁸ Wendell Phillips quote. (n.d.). Retrieved April 5, 2023, from <https://www.azquotes.com/quote/1237224?ref=statutes>

all potent unless the judges are willing to adopt it with a liberal view and only interpret draconian laws with an emphasis on the welfare of the citizens and conduct an in-depth study of the social, historical, and contextual factors. The judgement given in Navtej Singh Johar has famously stated that "history owes LGBTQ people an apology"²⁹. But the bigger question that is to be asked here is: who are these historical figures? Are they the original drafters of the Constitution? No, because the essence of the Constitution has been and will continue to promote the idea of equality regardless of a person's choices or preferences. This circles back to the judiciary and legal interpreters, who not only miserably failed in identifying the blatant injustice and inequality brought about by the application of Section 377 but also justified their stance by hiding behind the curtains of "public morality". This is not to say that the invalidation of Section 377 wasn't a significant step inching India closer to the models of equality and freedom of expression. But, given the immense responsibility of gearing social change and the dynamic nature of society, the judiciary should be extremely cautious while dealing with the interpretation of provisions that affect society because there is a very narrow leeway for the errors committed by the legal interpreters. The job of the judiciary is not limited to the application of law, but while applying the law, it is extremely crucial that they go forward with the right mindset and apply the correct means to reach a judgement.^{30,31}

²⁹ Justice Indu Malhotra in Navtej Singh Johar vs. UOI

³⁰ Navtej Singh Johar and others v union of india: Supreme Court's moment of atonement. (2022, October 28). Retrieved April 5, 2023, from <https://timesofindia.indiatimes.com/readersblog/my-tryst-with-law/navtej-singh-johan-and-others-v-union-of-india-supreme-courts-moment-of-atonement-46075/>

³¹ Morrison, A. (2012, October 06). The law is a fractal: The attempt to anticipate everything. Retrieved April 6, 2023, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2157804